

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-735119-D1 AND
ALL OTHER SEAMAN'S DOCUMENTS

Issued to: LEONARD J. WILLIAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1646

LEONARD J. WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 December 1966, an Examiner of the United States Coast Guard at New York City, New York revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Officer Bedroom Steward on board the United States SS AFRICAN RAINBOW under authority of the document above described, on or about May 10, 1966, Appellant assaulted and battered a crew member with a knife.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of three crew members of the vessel.

In defense, Appellant offered in evidence a document relating to his health, and testified on his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant revoking all documents issued to him.

The entire decision and order was served on 17 December 1966. Appeal was timely filed on 4 January 1967.

FINDINGS OF FACT

On 10 May 1966, Appellant was serving as an Officer Bedroom Steward on board the United States SS AFRICAN RAINBOW and acting under authority of his document while the ship was at sea.

At about 9:30 on the date in question, Appellant was in his room sitting on a chair near his bunk. He was intoxicated. Also in the room at this time were Appellant's roommates, Mr. Machado, Mr.

Campos, and Mr. Montanez. Machado, who was standing at the sink, got into an argument with Appellant. Appellant used some vulgar language to Machado, who countered by throwing a towel at Appellant. Campos left the room at about this time. On Machado's suggestion, he and Montanez tried to put Appellant in his bed. Appellant resisted, so they gave up the attempt.

Machado then left the room. Shortly thereafter Appellant picked up his knife, which was lying open on a table in the room, walked out into the passageway leading from their room to the open deck, and stabbed Machado in the back, arm, and chest. Machado was taken from the vessel to a hospital where he remained for eight days.

Appellant was paid off the vessel.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the evidence does not support the findings, and that the order is too severe.

APPEARANCE: Klein & Hirschbergenof New York; by W. Gitnick,
Esquire of counsel.

OPINION

Appellant attacks the sufficiency of the evidence. Briefly, his contentions in this regard are:

- 1) The knife was never placed in evidence;
- 2) There were no log book entries in evidence;
- 3) There was no medical proof as to Machado's injuries;
- 4) The government's witnesses contradicted one another;
- 5) Machado's testimony is not credible; and
- 6) Appellant's documentary evidence of his own injuries should not have been rejected by the Examiner.

Appellant urges that his version of the incident be accepted. He testified that he was awakened by Machado that evening and asked what he had said about some missing cigarettes. Not satisfied with his answers, Machado struck him several times and knocked him to the deck. As Machado kicked him, Appellant grabbed his leg and Machado fell against the table, causing the knife to fall to the deck. Machado picked up the knife and tried to strike Appellant.

Appellant struggled with Machado and succeeded in disarming him. Machado then departed.

None of the government's witnesses testified to any kind of struggle. Montanez and Campos, who Appellant conceded were in the room during this supposed fight, were in agreement as to the events that evening, although Campos did leave before the attempt to get Appellant into his bunk. Despite minor discrepancies in his relation of what occurred the night of 10 May, Machado's testimony is consistent with that of the neutral witnesses, and contrary to Appellant's story. The Examiner saw all the witnesses and observed their demeanor, and his evaluation of the testimony should be accepted unless he used irrational tests of credibility. Appeal no. 616. The Examiner's conclusion that Appellant's version is not credible is certainly justified by the record, and is therefore approved.

Appellant's other contentions are without merit. There was no need to place the knife in evidence--even Appellant testified as to the presence of a knife. The absence of log book entries is not controlling in these proceedings. Appeal no. 1147. Machado testified as to his injuries. Had Appellant doubted the existence of knife wounds he could have asked for a visual demonstration on cross-examination. He did not do so, and Machado's testimony is considered credible in this regard.

The conflicts in testimony of the government's witnesses were minor. The only witnesses to the alleged stabbing were Machado, and Appellant. The Examiner chose to believe Machado and that decision on credibility will not be disturbed at this level.

Appellant entered into evidence a Medical Report of Duty Status from the U. S. Public Health Service Hospital in Staten Island, New York, which was dated 31 May 1966. This document stated Appellant was fit for duty, and contained the notation "eye, chest, head, shoulder." It is difficult to understand Appellant's contention that this document in any way corroborates his version of the incident. That he was fit for duty twenty-one days after the incident has no relevance to the case whatsoever.

Finally, Appellant contends the order is too severe. The Scale of Average Orders, 46 CFR s 137.20-165, lists assault with a dangerous weapon (injury) as an offense warranting revocation the first time it is committed. Appellant has a prior record which includes an assault on a fellow crewmember in 1958. There being no mitigating circumstances surrounding this vicious stabbing, the order of revocation is appropriate, and is hereby affirmed.

The order of the Examiner dated at New York City on 16 December

1966, is AFFIRMED.

W. J. SMITH
Admiral U.S. Coast Guard
Commandant

Signed at Washington, D. C. this 12th day of July 1967.

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